



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, )  
Plaintiff, ) Cr. No. 09-4628GT  
v. ) ORDER  
HUGO MONTES-VICENTE, )  
Defendant. )

On June 2, 2010, Counsel for Defendant, Hugo Montes-Vicente (“Mr. Montes”), submitted an *Ex Parte* Request for Psychological Evaluation (“Request”) and request that the papers be filed under seal. For the reason stated below, these requests are **DENIED**.

On January 13, 2010, Mr. Montes pled guilty to one count of Being a Deported Alien Found in the United States, in violation of 8 U.S.C. § 1326(a) and (b). Instead of immediate sentencing, the Court ordered a Presentence Report (“PSR”). The PSR presented Mr. Montes’ continuing criminal history including several drug convictions for possession and/or sale of cocaine base, possession of a firearm, and two references to sexual misconduct. The Request focuses on these two references to Mr. Montes’ sexual misconduct.

1       The PSR (pg 3, line 42-pg 4, line 2) quotes Parole officials recommending that Mr. Montes  
 2 receive a “dishonorable discharge” because “he is not capable at the time of expiration of  
 3 commitment of functioning as a law abiding citizen.” Additionally, the parole report states that Mr.  
 4 Montes had failed to deal “with pedophilia appropriately and still poses a significant threat to [the]  
 5 community.” The PSR (pg 6, line 38-pg 7, line 4) states that there was a complaint lodged with the  
 6 Department of Children’s Services against Mr. Montes for sexual abuse. Mr. Montes was arrested  
 7 on an outstanding warrant with no further information about the sexual abuse allegations. The  
 8 Request states that based upon this information the PSR recommends “the highest possible  
 9 custodial consequences.” However, this is an incomplete assessment of the PSR’s  
 10 recommendation.

11      The PSR (pg 12, line 8- pg 13, line10) outlines Mr. Montes extensive criminal history and  
 12 his failure to become a law abiding citizen. Mr. Montes’ criminal history begins at the age of  
 13 sixteen with drug possession charges and progresses with sexual assault, more drug charges,  
 14 possession of a stolen vehicle and lying to police officers. As an adult, his criminal history  
 15 continues with several rock cocaine possessions, cocaine base sales, two possessions of a handgun  
 16 and another sexual abuse allegation, all done while Mr. Montes was in the United States illegally.  
 17 The PSR states that it is unlikely Mr. Montes will start anew in Mexico. The PSR concludes that  
 18 the high end of the guideline range is necessary “to serve as a deterrent and to protect the public  
 19 from his recurring criminal activity.” Essentially, the PSR recommends the high end of the  
 20 guideline range because of Mr. Montes’ extensive criminal history, his failure to abide by the laws  
 21 of the United States and his danger to the public.

22      Counsel for Mr. Montes requests a psychological evaluation “to ascertain his present mental  
 23 health, risk to community, if any, and potential need for treatment.” Counsel states that she does  
 24 not feel Mr. Montes is incompetent, but an evaluation would provide “additional insight” into this  
 25 case and potential § 3553 factors.

26      The Court deems that the benefits of a psychological evaluation would not outweigh the  
 27 substantial proposed cost. Mr. Montes had a psychological evaluation done when he was a  
 28 juvenile. The report pointed to Mr. Montes lack of education and use of drugs. Mr. Montes

1       declined to give the Probation Officer any further information regarding his physical or emotional  
2       health. Mr. Montes continuing criminal behavior, including his gang affiliation, is without a doubt  
3       a definite threat to the community. Finally, treatment options are limited in Mr. Montes case,  
4       especially since he is competent. Accordingly,

5       **IT IS ORDERED** that *Ex Parte* Request for Psychological Evaluation is **DENIED**

6       **IT IS FURTHER ORDERED** that the motion to file the Request under seal is also  
7       **DENIED**.

8       **IT IS SO ORDERED.**

9  
10      June 9<sup>th</sup> 2010  
11      date

12        
13      GORDON THOMPSON, JR.  
14      United States District Judge

15      cc: All counsel and parties without counsel

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